

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
ST. LOUIS DIVISION**

In Re:)	Waive 30 Days
)	
Rebecca Ferguson,)	Case No. 23-41118
<i>Respondent</i>)	
)	
Freedom Mortgage Corporation,)	Chapter: 13
<i>Movant</i>)	
vs.)	MOTION FOR RELIEF FROM THE
)	AUTOMATIC STAY
)	
Rebecca Ferguson,)	Filed By: Freedom Mortgage Corporation
<i>Respondent</i>)	
)	
and)	Original Hearing Date: <u>August 31, 2023</u>
)	
Diana S. Daugherty,)	Original Hearing Time: <u>10:00 a.m.</u>
<i>Trustee</i>)	
)	Hearing Location: Courtroom 7 South
)	
)	
)	
)	
)	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY
COMBINED WITH NOTICE OF HEARING

WARNING: THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE BY AUGUST 24, 2023.

YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. THE DATE IS SET OUT ABOVE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE BONNIE L CLAIR, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, 111 SOUTH TENTH STREET, 7TH FLOOR, SOUTH COURTROOM, ST. LOUIS, MISSOURI, 63102.

Freedom Mortgage Corporation, its successors or assigns (“Movant”), and in support of its Motion, states as follows:

1. Movant files this motion under Rules 4001 and 9014, Rules of Bankruptcy Procedure. On March 31, 2023, the Respondent filed a Petition for Adjustment of Debts under Chapter 13 of the Bankruptcy Code wherein Movant was listed as a secured creditor as to the real property of the Respondent.

2. Jurisdiction is invoked in the District Court under 28 U.S.C. § 1334(a) and jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1408(1) and § 157(b)(2)(G).

3. Rebecca Ferguson resides at 5342 Sunshine Drive, Saint Louis, MO 63109.

4. Diana S. Daugherty is the Trustee duly appointed by law (“Trustee”).

5. Movant is a secured creditor of the Respondent pursuant to a note executed by Respondent on June 3, 2016, whereby Respondent promised to repay the principal amount of \$127,821.00 plus interest to Embrace Home Loans, Inc. (the “Note”). The Note duly endorsed was transferred and conveyed to Movant. A copy of the Note is referenced as **Exhibit “A”**.

6. Contemporaneously with the execution of the Note, Respondent executed a Deed of Trust encumbering the real property located at and more commonly known as 5342 Sunshine Dr, Saint Louis, Missouri 63109 (the “Property”). The Deed of Trust was filed for record with the Office of the Recorder of Deeds of St. Louis County, Missouri on June 3, 2016, in Book 06032016 at Page 0161. A copy of the Deed of Trust is referenced as **Exhibit “B”**. The Property is legally described as follows:

Lot 19 in Block 3 of Gravois Homesites #3 and in Block 5826-S (formerly Out Lot 67) of the City of St. Louis, fronting 50 feet on the South line of Sunshine Drive, by a depth Southwardly on the East line of 73.61 feet, more or less, and on the West line of 73.50 feet, more or less, to the South line of said subdivision.

7. The Deed of Trust was subsequently assigned to Movant as evidenced by the Assignment of Deed of Trust filed for record with the Office of the Recorder of Deeds of St. Louis County, Missouri on January 13, 2023, in Book 01132023 at Page 0052 (the “Assignment”). A copy of the Assignment is referenced as **Exhibit “C”**.

8. On or about April 2, 2021, the parties agreed to a voluntary payment deferral to bring the mortgage current. Said agreement will defer thirteen (13) payments from May 2020 to May 2021 with a total of \$18,211.75 being deferred and will come due when the Borrowers pays the loan off, sells or refinances, as described in the attached documents. A Partial Claim Deed of Trust and Partial Claim Promissory Note (the” Partial Claim Agreement”) has been executed for the above amount in favor of the Secretary of Housing and Urban Development (HUD) and has been recorded in the county property records. The terms of the Note were modified by a Loan Modification Agreement between Respondent and Freedom Mortgage Corporation effective June 1, 2022, which changed the interest rate to 3.875% in accordance with the modified payment schedule and extended the maturity date to June 1, 2052 (the “Agreement”). A copy of the Partial Claim Agreement and Agreement is referenced as **Exhibit “D”**.

9. Movant is entitled to enforce the Note and Deed of Trust.

10. The Respondent has claimed an exemption for the Property in the amount of \$15,000.00 pursuant to 11 U.S.C. § 522 and RSMo § 513.475.

11. The Amended Plan (Docket Ref. No. 24) provides that the pre-petition arrearage due on the Note will be paid by the Trustee and Respondent will pay the post-petition mortgage payments directly to Movant.

12. The Respondent has failed to pay the post-petition payments due on the Agreement held by the Movant. As of July 11, 2023, the following amounts are now due and owing:

DESCRIPTION	AMOUNT
(3) Late Payments @ \$962.33 (5/1/2023 – 7/1/2023)	\$2,886.99
Suspense	(\$962.23)
Total	\$1,924.76

13. These amounts due and owing are in addition to any amounts that have come due after the filing of this Motion, pursuant to the terms of the Agreement. A post-petition payment history is referenced as **Exhibit “E”**.

14. In addition, Movant will incur reasonable attorney fees of \$700.00 and court filing costs of \$188.00 in connection with seeking the relief requested in this Motion.

15. As of July 11, 2023, the total debt due on this loan is approximately: \$103,365.45. An exact payoff is available upon request of an appropriate party.

16. The estimated value of the Property is \$150,000.00. The basis for such valuation is Respondent’s Schedule D.

17. The Respondent has failed to cure the delinquency and Movant’s interest in the Property is not adequately protected. Therefore, relief from the automatic stay is warranted pursuant to 11 U.S.C. § 362(d)(1).

18. The Respondent has materially defaulted with respect to payment of Movant’s secured claim and have caused unreasonable delay, which is prejudicial to Movant.

19. To remedy this prejudicial delay to Movant, an Order for Relief from the Automatic Stay should be granted, that is effective immediately without a stay of enforcement pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3).

20. Movant seeks relief for the purpose of exercising its remedies available under state law, up to and including foreclosure of its Deed of Trust against Respondent’s interest in the Property.

Movant further seeks relief in order to contact the Respondent, at its option, by telephone or by written correspondence, to offer, provide, and enter into a forbearance agreement, deed in lieu of foreclosure, loan modification, refinance agreement, or other loan workout/loss mitigation agreements.

21. Movant specifically requests permission from this Honorable Court to communicate with the Respondent and Respondent's counsel, to the extent necessary to comply with applicable non-bankruptcy law.

22. Movant requests that any order granting it relief from the automatic stay contain a provision that the Order shall survive any conversion of this case to a Chapter 7 proceeding.

WHEREFORE, PREMISES CONSIDERED, Movant, its successors or assigns, prays that it be granted Relief from the Automatic Stay of 11 U.S.C. §362 to enforce its lien granted in the Deed of Trust, and for such other and further relief, as the Court deems proper, including, but not limited to, fees and costs in the amount of \$888.00.

/s/ **Michael J. McCormick**

Michael J McCormick, Missouri Bar No: 64649
Attorney for Movant
McCalla Raymer Leibert Pierce, LLC
1544 Old Alabama Road
Roswell, GA 30076
678-281-3918
Michael.McCormick@mccalla.com

CERTIFICATE OF MAILING/SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on July 31, 2023, with the United States Bankruptcy Court, and has been served on the parties in interest via email by the Court's CM/ECF system as listed on the Court's Electronic Mail Notice List.

I certify that a true and correct copy of the foregoing document was filed electronically with the United States Bankruptcy Court and has been served by Regular United States Mail Service, first class, postage pre-paid, addressed to the parties below on July 31, 2022.

Rebecca Ferguson
5342 Sunshine Drive
Saint Louis, MO 63109
RESPONDENT

Timothy Patrick Powderly
The Powderly Law Firm, L.L.C.
11965 St. Charles Rock Rd.
Suite 202
St. Louis, MO 63044
RESPONDENT'S ATTORNEY

(served via ECF notification)

Diana S. Daugherty
Chapter 13 Trustee
P. O. Box 430908
St. Louis, MO 63143
CHAPTER 13 TRUSTEE

(served via ECF notification)

Office of US Trustee
111 S Tenth St, Ste 6.353
St. Louis, MO 63102
U.S. TRUSTEE

(served via ECF notification)

U.S. Department of Housing and
Urban Development
400 State Avenue
Gateway Tower, Suite 510
Kansas City, KS 66101
JUNIOR LIENHOLDER

United States of America
c/o Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
JUNIOR LIENHOLDER

United States of America
c/o United States Attorney
815 Olive Street, Suite 200
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JUNIOR LIENHOLDER

/s/ *Michael J. McCormick*

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
ST LOUIS DIVISION**

In Re:)	
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Rebecca Ferguson,)	Case No. 23-41118
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Debtor.)	Chapter: 13
)	
Freedom Mortgage Corporation,)	
vs.)	
)	
Rebecca Ferguson,)	
Respondent)	
and)	
Diana S. Daugherty,)	
Trustee.)	
)	
)	
)	
)	
)	
)	

SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE

The following Exhibits referenced in the Attached Pleading filed on behalf of Freedom Mortgage Corporation are available on request to the undersigned.

1. **Exhibit “A”**, the Note dated June 3, 2016 in the principal sum of \$127,821.00.
2. **Exhibit “B”**, the Deed of Trust for the Property that is the subject of the Pleading. The Deed of Trust was filed for record with the Office of the Recorder of Deeds of St. Louis County, Missouri on June 3, 2016, in Book 06032016 at Page 0161. The property is legally described as:

Lot 18 in Block 3 of Gravois Homesites #3 and in Block 5826-S (formerly Out Lot 67) of the City of St. Louis, fronting 50 feet on the South line of Sunshine Drive, by a depth Southwardly on the East line of 73.61 feet, more or or less, and on the West line of 73.50 feet, more or less, to the South line of said subdivision.

Commonly known as 5342 Sunshine Dr, Saint Louis, Missouri 63109.

3. **Exhibit “C”**, the Assignment of the subject Deed of Trust.

4. **Exhibit “D”**, the Partial Claim Deed of Trust and Partial Claim Promissory Note and Loane Modification Agreement.
5. **Exhibit “E”**, a Post-Petition Payment History.

/s/ **Michael J. McCormick**

Michael J McCormick, Missouri Bar No: 64649

Attorney for Movant

McCalla Raymer Leibert Pierce, LLC

1544 Old Alabama Road

Roswell, GA 30076

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